

## Message Text

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ORIGIN ARA-14

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O 061747Z JUN 78  
FM SECSTATE WASHDC  
TO AMEMBASSY SAN JOSE

C O N F I D E N T I A L STATE 142698

FOR CHARGE

E.O. 11652: GDS

TAGS: SHUM, OAS, CR

SUBJECT: HUMAN RIGHTS: COOPERATION WITH GOCR IN VIII  
OAS GENERAL ASSEMBLY

REF: STATE 123344

SUMMARY: PROBABLY MOST URGENT SINGLE HUMAN RIGHTS  
QUESTION FACING UPCOMING VIII GENERAL ASSEMBLY WILL BE  
LEGAL STATUS OF IAHRG AFTER THE SAN JOSE PACT GOES INTO  
EFFECT. SOME COUNTRIES MAY TRY TO ARGUE THAT PACT'S  
ENTRY INTO EFFECT WITH 11 RATIFICATIONS TERMINATES ALL  
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ACTIVITIES OF CURRENT IAHRG UNTIL NEW COMMISSION MEMBERS  
CAN BE ELECTED AND THAT FUTURE AUTHORITY OF IAHRG WITH  
RESPECT TO NON-SIGNATORY STATES WILL TERMINATE AS OF  
SAME DATE. WE BELIEVE THIS OASGA MUST ACT TO CLARIFY  
STATUS OF IAHRG, PARTICULARLY ITS SECRETARIAT, AND  
CONFIRM ITS CONTINUED AUTHORITY VIS-A-VIS OAS MEMBER  
STATES WHICH HAVE NOT YET RATIFIED PACT. GIVEN ITS

DEEP INTEREST IN PACT, WE HOPE YOU CAN PERSUADE GOCR,  
AND NEW FONMIN CALDERON FOURNIER IN PARTICULAR,  
TO COOPERATE WITH US GENERALLY ON HUMAN RIGHTS IN  
VIII GA AND IN PARTICULAR TO TAKE PERSONAL LEAD  
IN EFFORT TO SOLVE PROBLEM OF IAHRG STATUS. END SUMMARY.

1. TWO MAJOR ISSUES IN AREA OF HUMAN RIGHTS WILL CONFRONT  
VIII OASGA WHICH CONVENES IN WASHINGTON JUNE 21. THE FIRST  
IS TO CLARIFY LEGAL STATUS OF INTER-AMERICAN HUMAN RIGHTS  
COMMISSION (IAHRC) WHEN THE AMERICAN CONVENTION ON HUMAN  
RIGHTS (PACT OF SAN JOSE) ENTERS INTO EFFECT WITH 11  
RATIFICATIONS (EIGHT HAVE NOW RATIFIED AND GOCR MAY AGAIN  
SUGGEST REDUCTION OF NEEDED NUMBER TO SEVEN, AS AT VII GA  
IN GRENADA). SECOND IS HOW TO DEAL WITH IAHRG ANNUAL  
REPORT AND SPECIAL REPORTS ON PARAGUAY AND URUGUAY. WHILE  
WE DO NOT EXPECT EMOTIONAL CONFRONTATION ON HUMAN RIGHTS  
ISSUES TO DOMINATE THIS GA AS IT DID VII GA, WE WILL BE  
PUSHING HARD TO CONFIRM CONTINUED AUTHORITY OF IAHRG  
AND OBTAIN STRONG RESOLUTIONS IN SUPPORT OF ITS  
RECOMMENDATIONS AND GENERAL WORK. WE HOPE TO ENLIST  
COOPERATION OF GOCR AND OTHER LIKE-MINDED GOVERNMENTS  
IN ACHIEVING THESE GOALS. IN PARTICULAR, WE WOULD  
LIKE TO SEE GOCR ASSUME LEAD BY EFFORT TO CLARIFY  
ON-GOING AUTHORITY OF IAHRG.

2. ACCORDINGLY, UNLESS YOU PERCEIVE OBJECTION, YOU  
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SHOULD SEEK APPOINTMENT WITH FOREIGN MINISTER CALDERON  
FOURNIER TO DISCUSS ISSUES BEFORE VIII OASGA, WITH  
EMPHASIS ON QUESTION OF STATUS OF IAHRG. PLEASE  
INDICATE OUR DEEP CONCERN WITH THIS ISSUE BUT  
RECOGNITION THAT GOCR, AS HOST TO CONFERENCE IN 1969  
AND LEADER OF DRIVE FOR ITS RATIFICATION, SHOULD TAKE  
LEAD. FOLLOWING POINTS CAN BE MADE IN DISCUSSION WITH  
FONMIN CALDERON.

3. THE FUTURE STATUS OF THE IAHRG UNDER THE SAN JOSE  
PACT IS BECOMING THE SUBJECT OF LEGAL CONTROVERSY.  
THE PACT WILL COME INTO EFFECT WHEN IT IS RATIFIED BY  
11 MEMBER STATES. TWO CONTROVERSIAL PROPOSITIONS HAVE  
BEEN ADVANCED REGARDING EFFECT ON PRESENT IAHRG OF  
PACT'S ENTRY INTO FORCE. ONE HOLDS THAT PACT WILL  
IMMEDIATELY TERMINATE MANDATE OF PRESENT IAHRG AND  
CREATE HIATUS IN AUTHORITY OF SECRETARIAT UNTIL  
A NEW COMMISSION IS ELECTED, WHICH WOULD PROBABLY BE  
AT IX OASGA. SECOND PROPOSITION IS THAT ENTRY  
INTO FORCE WILL END AUTHORITY OF IAHRG OVER  
OAS MEMBER STATES WHICH HAVE NOT ADHERED TO  
SAN JOSE PACT. IF EITHER VIEW WERE TO PREVAIL,

PROTECTION OF HUMAN RIGHTS IN HEMISPHERE WOULD BE SERIOUSLY UNDERMINED. EIGHT STATES HAVE RATIFIED TO DATE AND OTHERS ARE EXPECTED TO DO SO SOON.

4. PROBLEM ARISES FROM AMBIGUITY OF REFERENCES TO

IAHRC IN OAS CHARTER AND PACT OF SAN JOSE. ARTICLE 51 OF CHARTER LISTS IAHRC AS ONE OF "ORGANS" THROUGH WHICH OAS ACCOMPLISHES ITS PURPOSES. THIS SUGGESTS THAT IAHRC IS PERMANENT BODY WHICH COULD NOT CEASE TO EXIST WITHOUT AMENDMENT OF CHARTER. ARTICLE 112 OF CHARTER, HOWEVER, WHICH BEGINS WITH WORDS THERE SHALL BE AN INTER-AMERICAN COMMISSION ON HUMAN RIGHTS', SEEMS TO DENY PRESENT EXISTENCE OF IAHRC THROUGH ITS  
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USE OF FUTURE TENSE. QUESTION ARISES WHETHER THIS MEANS THAT ONLY FUTURE COMMISSION, TO BE CREATED UNDER 1969 HUMAN RIGHTS CONVENTION, WILL BE PERMANENT ORGAN OF OAS OR WHETHER THIS IS SIMPLY FLUKE OF DRAFTING IN DOCUMENT WHICH USES FUTURE AND PRESENT TENSE INTERCHANGEABLY. ARTICLE 150 OF CHARTER FURTHER OBSCURES STATUS OF IAHRC BY PROVIDING THAT UNTIL CONVENTION ON HUMAN RIGHTS ENTERS INTO FORCE, PRESENT IAHRC WILL KEEP VIGILANCE OVER OBSERVANCE OF HUMAN RIGHTS. IT COULD BE ARGUED THAT EFFECT OF ARTICLE 150 WOULD BE TO TERMINATE PRESENT COMMISSION'S MANDATE UPON ENTRY INTO FORCE OF SAN JOSE PACT. AT LEAST ONE OAS AMBASSADOR HAS MADE THIS ARGUMENT IN PRIVATE DISCUSSION.

5. UNFORTUNATELY, PACT OF SAN JOSE DOES NOT CLARIFY STATUS OF IAHRC, ALTHOUGH ITS NEGOTIATING HISTORY WOULD SEEM TO POINT TO CONCLUSION THAT THERE IS CONTINUITY BETWEEN PRESENT IAHRC AND COMMISSION PROVIDED FOR IN THE PACT. ARTICLE 33 OF PACT DECLARES THAT "COMMISSION" AND "COURT" ARE TO HAVE COMPETENCE WITH RESPECT TO OBLIGATIONS OF STATES UNDER PACT. THIS LINKAGE OF IAHRC WITH NEWLY-CREATED INTER-AMERICAN COURT OF HUMAN RIGHTS COULD BE ARGUED TO INDICATE THAT FORMER BEGINS ON SAME FOOTING AS LATTER AND IS THEREFORE NEW. AGAIN, NEGOTIATING HISTORY OF PACT SUGGESTS THAT THIS IS NOT THE CASE. IN DESCRIBING FUNCTIONS OF IAHRC, PACT RETAINS VERBATIM FIRST FOUR FUNCTIONS CONTAINED IN PRESENT IAHRC STATUTE, TWO OF WHICH APPEAR TO GIVE IAHRC RESPONSIBILITY TOWARD OAS MEMBER STATES, WHETHER OR NOT SIGNATORIES OF PACT. FINAL REPORT OF 1969 SAN JOSE CONFERENCE INDICATES THAT COMMISSION  
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HAD RECOMMENDED ADOPTION OF LANGUAGE WHICH WOULD HAVE CLEARLY ESTABLISHED CONTINUITY OF PRESENT IAHR WITH BODY CREATED UNDER PACT OF SAN JOSE, BUT THAT SUGGESTION WAS NOT ADOPTED BECAUSE IT WAS FELT DESIREABLE TO SPELL OUT SPECIFICALLY ORGANIZATION AND FUNCTIONS OF IAHR (ARTICLES 34-43 OF PACT),

WITHOUT RELYING SIMPLY ON REFERENCE TO OTHER DOCUMENTS. FINALLY, TRANSITORY PROVISIONS OF PACT (ARTICLES 79 AND 80) PROVIDE FOR ELECTION OF NEW MEMBERS OF IAHR UPON PACT'S ENTRY INTO FORCE.

6. THIS VAGUE AND SEEMINGLY CONTRADICTIONARY LANGUAGE IN THE CHARTER AND THE PACT MAKE IT ESSENTIAL FOR VIII GA TO CLARIFY STATUS OF IAHR BEFORE REQUISITE 11 RATIFICATIONS ARE DEPOSITED. THE USG BELIEVES THAT THE PROBLEM CAN BE TAKEN CARE OF BY A GA RESOLUTION WHICH WOULD: (A) URGE MEMBER STATES TO RATIFY PACT OF SAN JOSE; (B) CLARIFY THE CONTINUED AUTHORITY OF THE IAHR VIS-A-VIS ALL OAS MEMBER STATES UNDER ITS EXISTING STATUTES EVEN AFTER THE ENTRY INTO EFFECT OF THE PACT; AND (C) CONVENE A SPECIAL GENERAL ASSEMBLY UPON PACT'S ENTRY INTO FORCE TO ELECT NEW IAHR MEMBERS AND AVOID LENGTHY GAP IN SUPERVISION OF SECRETARIAT.

7. WE BELIEVE THIS OR A SIMILAR RESOLUTION WOULD ENSURE AN ORDERLY TRANSITION FOR THE IAHR FROM THE CURRENT SITUATION TO ITS OPERATION UNDER THE PACT OF SAN JOSE. WHILE WE INTEND TO CONSULT WITH OTHER FOREIGN MINISTERS OF COUNTRIES WHICH ARE LEADING SUPPORTERS OF HUMAN RIGHTS TO CONCERT A STRATEGY FOR PASSING A RESOLUTION ALONG THESE LINES AT THE VIII GA, WE HAVE BEGUN WITH COSTA RICA BECAUSE OF ITS UNIQUE KNOWLEDGE AND CONCERN. WE HOPE THAT

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FOREIGN MINISTER CALDERON FOURNIER WILL LEAD EFFORT TO REGULARIZE STATUS OF IAHR. WE WOULD BE INTERESTED IN CONSULTING ON SPECIFIC WORDING OF RESOLUTION TO CLARIFY IAHR STATUS. WE UNDERTAKE TO FOLLOW HIS LEAD IN CONSULTING WITH OTHER GOVERNMENTS TO ASSURE STRONG SUPPORT FOR SUCH AN INITIATIVE.

8. STATE 136073 TO MEXICO IS BEING REPEATED TO SAN JOSE AND MAY BE USED INFORMALLY AS GUIDANCE FOR DISCUSSION OF THE ISSUES WHICH WILL ARISE IN VIII GA. ALTHOUGH EMBASSY MAY USE SUBSTANCE OF POINTS MADE IN THIS CABLE, FACT THAT THEY ARE INCLUDED IN CONFIDENTIAL COMMUNICATION TO MEXICAN FOREIGN MINISTER SHOULD NOT BE REVEALED.

9. YOU MAY ADVISE FOREIGN MINISTER CALDERON THAT US DELEGATION WILL BE INTERESTED IN CONSULTING

WITH GOCR DELEGATION ON THIS AND OTHER POINTS OF MUTUAL INTEREST IN AGENDA. PLEASE ADVISE REACTION.

10. COPY THIS CABLE SHOWN TO AMBASSADOR WIESSMAN WHO CONCURS. VANCE

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## Message Attributes

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